

By: Senator(s) Williamson

To: Judiciary

SENATE BILL NO. 2535

1 AN ACT TO PROVIDE THAT CERTAIN INFORMATION REGARDING A
2 DEFECTIVE PRODUCT, FINANCIAL FRAUD, UNFAIR INSURANCE CLAIMS
3 PRACTICES OR ENVIRONMENTAL HAZARD SHALL BE PRESUMED TO BE PUBLIC
4 INFORMATION; TO ALLOW SUCH INFORMATION TO BE KEPT CONFIDENTIAL BY
5 COURT ORDER; TO DEFINE CERTAIN TERMS; TO AMEND SECTIONS 75-26-5,
6 75-26-11 AND 75-26-15, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE
7 PROVISIONS OF THIS ACT; AND FOR RELATED PURPOSES.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

9 **SECTION 1.** The Legislature finds and declares all of the
10 following:

11 (a) Secrecy agreements that prohibit disclosure to the
12 public or public safety agencies of information relating to
13 defective products, financial fraud, unfair insurance claims
14 practices or environmental hazards are injurious to the health,
15 safety and economic well-being of all citizens of the State of
16 Mississippi.

17 (b) Secrecy agreements can have tragic consequences. A
18 widely known example of the disastrous consequences of secrecy
19 agreements is the tragedy resulting from dangerous defects in
20 Firestone tires, which have reportedly caused more than 150 deaths
21 and more that 500 injuries worldwide. For many years,
22 Bridgestone/Firestone, Inc. knew about these dangerous defects,
23 but kept the information out of the public eye by secretly
24 settling many lawsuits brought as a result of crashes related to
25 defective tires. During that time, the public continued to drive
26 on Firestone tires, unaware of the mortal danger to their families
27 and themselves. As a result of these hidden, dangerous defects,
28 on August 9, 2000, Bridgestone/Firestone, Inc. and Ford Motor Co.
29 jointly announced that Firestone would recall over 14 million



30 tires. In the absence of a secrecy agreement, information about
31 this dangerous product could have been disclosed publicly, which
32 could have saved lives and avoided injuries. However, the
33 companies demanded secrecy as the price of compensation for
34 victims, resulting in many deaths and injuries that could have
35 been avoided absent demands for secrecy agreements.

36 (c) Secrecy agreements can allow companies to shield
37 information that shows a practice of treating consumers unfairly
38 and can permit those companies to continue illegal practices
39 without accountability. The circumstances that allowed secrecy
40 regarding the claims of victims of the Northridge earthquake and
41 the contaminated drinking water connected with the story of Erin
42 Brockovich also highlight the need for openness.

43 (d) Secrecy agreements allow companies to shield
44 life-threatening dangers and harmful practices from public view,
45 thereby severely jeopardizing public welfare and safety. It is
46 against the public interest to allow secrecy agreements about
47 defective products, financial fraud, unfair insurance claims
48 practices or environmental hazards to remain confidential except
49 in very limited circumstances upon careful judicial oversight and
50 review.

51 **SECTION 2.** (1) It is the intent of the Legislature to
52 better protect Mississippians from injuries, deaths, or financial
53 loss caused by defective products, financial fraud, unfair
54 insurance claims practices or environmental hazards by also
55 creating a presumption against secrecy for settlement agreements
56 and confidentiality agreements not filed with the court and
57 information acquired through discovery.

58 (2) Notwithstanding any other provision of law, in an action
59 based upon injury, wrongful death, or financial loss allegedly
60 caused by a defective product, financial fraud, unfair insurance
61 claims practice or environmental hazard, information concerning
62 the defective product, financial fraud, unfair insurance claims



63 practice or environmental hazard contained in settlement
64 agreements and confidentiality agreements not filed with the
65 court, and information acquired through discovery concerning the
66 defective product, financial fraud, unfair insurance claims
67 practice or environmental hazard, shall be presumed to be public
68 information and may not be kept confidential pursuant to agreement
69 of the parties. This information may be kept confidential for a
70 period that the court deems appropriate only pursuant to a court
71 order based upon a finding that either:

72 (a) The information is a trade secret or otherwise
73 privileged under existing law.

74 (b) (i) An overriding interest exists that overcomes
75 the right of public access to the information.

76 (ii) The overriding interest supports keeping the
77 information confidential.

78 (iii) A substantial probability exists that the
79 overriding interest will be prejudiced if the information is not
80 kept confidential.

81 (iv) The proposed confidentiality is narrowly
82 tailored.

83 (v) No less restrictive means exist to achieve the
84 overriding interest.

85 (3) Unless the information is a trade secret or otherwise
86 privileged under existing law, in an action based upon injury,
87 wrongful death, or financial loss allegedly caused by a defective
88 product, financial fraud, unfair insurance claims practice or
89 environmental hazard, any portion of an agreement or contract that
90 restricts a party from disclosing information relating to the
91 defective product, financial fraud, unfair insurance claims
92 practice or environmental hazard to a governmental agency with
93 enforcement authority over the defective product, financial fraud,
94 unfair insurance claims practice or environmental hazard is void,
95 contrary to public policy, and may not be enforced.



96 (4) In order to implement this section, the court may
97 require the requesting party to provide an identifying log or
98 other document.

99 (5) As used in this section:

100 (a) "Defective product" means a product that may be
101 defective because of a defect in manufacturing or design or a
102 failure to adequately warn the consumer of a hazard involved in
103 the foreseeable use of the product, where the defect may result in
104 personal injury to one or more persons.

105 (b) "Financial fraud" means any fraudulent insurance
106 practice or any fraudulent plan or scheme to sell a publicly
107 offered investment product without full disclosure of the risks
108 associated with the purchase of the product, where the plan or
109 scheme may cause or has caused financial loss.

110 (c) "Environmental hazard" means a release or
111 threatened release of a hazardous substance that poses a threat to
112 public health or safety involving present or future danger of
113 death, bodily injury or health disability to human beings exposed
114 to a hazardous substance release or threatened release.

115 (d) An attorney shall not sell or offer for sale any
116 information obtained through discovery to any member of the
117 Mississippi Bar or to any other person in violation of the
118 prohibitions on attorney solicitation, fee splitting, or financial
119 arrangements among lawyers or nonlawyers. Violation of this
120 paragraph shall be a basis for professional discipline by the
121 Mississippi Bar. This section does not alter or mitigate any
122 existing rule or provision that may also be applicable to the
123 conduct.

124 **SECTION 3.** Section 75-26-5, Mississippi Code of 1972, is
125 amended as follows:

126 75-26-5. (1) Except as provided in Sections 1 and 2 of
127 Senate Bill No. 2535, 2003 Regular Session, actual or threatened
128 misappropriation may be enjoined. Upon application to the court,



129 an injunction shall be terminated when the trade secret has ceased
130 to exist, but the injunction may be continued for an additional
131 reasonable period of time in order to eliminate commercial
132 advantage that otherwise would be derived from the
133 misappropriation.

134 (2) In exceptional circumstances, an injunction may
135 condition future use upon payment of a reasonable royalty for no
136 longer than the period of time for which use could have been
137 prohibited. Exceptional circumstances include, but are not
138 limited to, a material and prejudicial change of position prior to
139 acquiring knowledge or reason to know of misappropriation that
140 renders a prohibitive injunction inequitable.

141 (3) In appropriate circumstances, affirmative acts to
142 protect a trade secret may be compelled by court order.

143 **SECTION 4.** Section 75-26-11, Mississippi Code of 1972, is
144 amended as follows:

145 75-26-11. Except as provided in Sections 1 and 2 of Senate
146 Bill No. 2535, 2003 Regular Session, in an action under this
147 chapter, a court shall preserve the secrecy of an alleged trade
148 secret by reasonable means, which may include granting protective
149 orders in connection with discovery proceedings, holding in-camera
150 hearings, sealing the records of the action and ordering any
151 person involved in the litigation not to disclose an alleged trade
152 secret without prior court approval.

153 **SECTION 5.** Section 75-26-15, Mississippi Code of 1972, is
154 amended as follows:

155 75-26-15. (1) Except as provided in subsection (2), this
156 chapter displaces conflicting tort, restitutionary and other law
157 of this state providing civil remedies for misappropriation of a
158 trade secret.

159 (2) This chapter does not affect:

160 (a) Contractual remedies, whether or not based upon
161 misappropriation of a trade secret;



162 (b) Other civil remedies that are not based upon
163 misappropriation of a trade secret; or

164 (c) Criminal remedies, whether or not based upon
165 misappropriation of a trade secret.

166 (d) The provisions of Sections 1 and 2 of Senate Bill
167 No. 2535, 2003 Regular Session.

168 **SECTION 6.** This act shall take effect and be in force from
169 and after July 1, 2003.

